

## COMMONWEALTH EDISON COMPANY )

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## **Executive Summary: Why ComEd's Petition Should Be Granted**

In this proceeding ComEd is requesting a declaration that service under its Rate 6L – Large General Service (Rate 6L) be declared competitive pursuant to Section 16-113 of the Public Utilities Act, 220 ILCS 5/16-113, for those customers with loads of 3 MW or more. As explained further below, this customer group has actively been making competitive choices. If this declaration is granted, ComEd would no longer offer service under Rate 6L after June 2003 to those 3 MW and up customers that are not taking service under the rate at that point in time, and would not offer Rate 6L service to any customers with loads of 3 MW or more after June of 2006. As the evidence shows, allowing ComEd now to discontinue service under Rate 6L will ultimately help lower for all customers the costs of service that would otherwise be incurred, result in the development of new product services and offerings, and help the ongoing development of competition in the provision of retail electric service in Illinois. *See* Tr. at 911 (Juracek); ComEd Ex. 10 at 13-14; Tr. at 1042-43 (Landon); Tr. at 181-82 (McDermott); ComEd Ex. 3 at 12.

Rate 6L is a tariff through which ComEd's largest customers can receive power and energy at their premises. The 3 MW and up customer segment is the customer group that has historically exhibited, through use of curtailment or interruptible rates, the most flexibility in the purchase and use of electricity. ComEd Ex. 7 at 8. This is also the group that has historically had competitive options, such as cogeneration and fuel-switching. In addition, this is the group that has most embraced the additional competitive options provided by the Electric Service Customer Choice and Rate Relief Act of 1997 (the Restructuring Act). *Id.* If service under Rate 6L is discontinued,

customers in the 3 MW and greater group will continue to have other service options, including taking delivery services under ComEd's Rate – Retail Customer Delivery Services (Rate RCDS) together with competitive supply from a retail electric supplier (RES), delivery services and supply under ComEd's Rider – Power Purchase Option (Rider PPO), or service under ComEd's real time pricing rate, Rate – Hourly Energy Pricing (Rate HEP).

These customers have been seeking, and finding, alternatives to service under Rate 6L:

- Fewer than 30% of the customers in ComEd's service area that have loads of 3 MW or more are currently taking service under Rate 6L (ComEd Ex. 7 at 4-5);
- Over 70% of customers with loads of 3 MW or more that are eligible to take service under Rate 6L have instead opted to take delivery services and a competitive supply option (*id.*);
- Of this 70%, 44% are currently taking service from a retail electric supplier or RES that is not affiliated with ComEd (this represents 31% of the total 3 MW and greater customer group) (*id.*);
- This level of choice compares quite favorably with that achieved in the natural gas industry as it began to open to competition in the mid-1980s (NewEnergy Ex. 1 at 18);
- Of those customers that continue to take service under Rate 6L, over 10% are doing so in conjunction with a special contract that provided negotiated savings and that

reflected previous determinations that such customers had competitive options to service under Rate 6L (ComEd Ex. 7 at 14; ComEd Ex. 4 at 18);

- Competition among RESs for the opportunity to serve the 3 MW and over customer segment is especially intense (NewEnergy Ex. 1 at 12); and
- Those customers that have taken service from RESs have been able to go off Rate 6L service with no cognizable reduction in service quality or reliability (NewEnergy Ex. 2 at 2.)

Market conditions will likely assure the continued availability of low cost power for this customer segment. This is because:

- There is more than enough available supply within the ComEd control area to assure competitively priced supply for these customers, who have a combined total demand of 2,500 MW, 950 MW of which is already being supplied by RESs and 650 MW of which is currently being supplied under the PPO. Overall, 5,000 MW of new generation capacity was constructed in Northern Illinois between 1999 and 2001, an additional 3,500 MW is expected to be operational by the end of 2002, and an additional 4,300 MW of planned generation is in the queue (ComEd Ex. 5 at 5-6, 11);
- There is approximately 4,700 MW of transmission import capability into the ComEd control area, which means the customers in the 3 MW and greater group can also access the substantial additional sources of competitive supply available throughout the region (ComEd Ex. 5 at 13-15);

- RESs are capable of flowing power to meet the needs of the entire 3 MW and greater customer segment (NewEnergy Ex. 1 at 19); and
- The economics of choice are sufficiently beneficial that these customers can be expected to continue to use competitive sources of supply for the foreseeable future (ComEd Ex. 8 at 11-12).

Despite the foregoing facts, several groups intervened in this proceeding and opposed the requested declaration, variously arguing that the future of the market was uncertain, that market pricing can be volatile, and that customers should retain an option to return to service under Rate 6L at any time. Although it is true that various market structures, such as regional transmission organizations, are still evolving, there has always been uncertainty and volatility in the energy market. To date, that has not stopped the development of competitive choice for this customer group. Moreover, there is now greater clarity in the direction market development will take than there has been in the past. Indeed, contrary to the assertion of some of the parties, because of the low market values that currently prevail and the ample generation capacity present in ComEd's service territory – both of which will ensure access to energy at competitive prices well into the future – now is an ideal time to move forward with a competitive declaration of this type. *See* ComEd Ex. 6 at 3-4.

Of even greater importance, it is necessary for additional transitional steps like this to be taken if the benefits of competition are going to be ultimately shared with all customer classes. As the evidence shows:

- The continued availability of Rate 6L to customers that have competitive options leaves future pricing and load-serving obligations of both ComEd and the RESs in limbo and promotes a focus on short-term relationships and short-term decisions to the detriment of long-term market development (ComEd Ex. 10 at 10);
- ComEd is now at the point at which it needs to decide how it will serve load on its system both after 2004 when price and quantity terms change in its Power Purchase Agreement (PPA) with its affiliate Exelon Generation, and after 2006 when a new PPA will need to be negotiated. Without greater certainty as to the loads it will be serving and the type of pricing applicable, ComEd will need to secure more capacity than would otherwise be necessary, thus increasing the costs that customers will otherwise be called upon to pay. (ComEd Ex. 10 at 10-11,13). This also means that less capacity will be available in the market for competitive supply;
- Limiting the availability of Rate 6L now is likely to lead to lower costs over the long term for those customers that have fewer choices and lead to more and better choices for all customers. (ComEd Ex. 10 at 14). This is because markets do not mature overnight – they develop through the interaction of supply and demand. To encourage suppliers to develop more and better products, customers need to have a reason to demand and use them. The availability of Rate 6L dampens the demand of those customers who can best encourage the development of products that will ultimately benefit all customers. (ComEd Ex. 11 at 7).



For all of these reasons, moving forward is the right thing to do. Granting ComEd's Petition and limiting the future availability of Rate 6L for this customer segment is an important transitional step that can and should be taken now.

## **I. Overview of Statutory Standards and Objectives**

The statutory section that governs this proceeding, 220 ILCS 5/16-113, was adopted as part of the Restructuring Act. In passing that Act, the General Assembly recognized that “[c]ompetitive forces are affecting the market for electricity as a result of recent federal regulatory and statutory changes and the activities of other states,” and adopted a number of provisions that would help Illinois adapt to and benefit from those changes. *See* 220 ILCS 5/16-101A(b). Section 16-113 is a provision that allows such an adaptation. The specific requirements of Section 16-113, and their context within the other provisions that make up the Restructuring Act, are discussed in the following two sections.

### **A. Section 16-113: Tariffed Services Should Be Declared Competitive When Reasonably Equivalent Service Alternatives Exist**

Section 16-113(a), allows a utility to come before the Commission and seek a declaration that a tariffed service like Rate 6L, which it is otherwise obligated to provide pursuant to Section 16-103, is competitive and no longer need be provided. 220 ILCS 5/16-113(a) (“[a]n electric utility may, by petition, request the Commission to declare a tariffed service provided by the electric utility to be a competitive service”). That section describes what the utility is required to prove in order to obtain such a declaration:

The Commission shall declare the service to be a competitive service for some identifiable customer segment or group of customers, . . . , if the service or a reasonably equivalent substitute service is reasonably available to the customer segment or group . . . at a comparable price from one or more providers other than the electric utility or an affiliate of the electric utility, and the electric utility has lost or there is a reasonable likelihood that the electric utility will lose business for the service to the other provider or providers.

*See* 220 ILCS 5/16-113(a). In determining whether the above standard has been satisfied, the Commission is also to consider the adequacy of transmission capacity into the petitioning utility's service area. *Id.*

Section 16-113(a) also sets forth the Commission's three options with respect to ruling on a petition that seeks a competitive declaration:

The Commission shall make its determination and issue its final order declaring or refusing to declare the service to be a competitive service within 120 days following the date that the petition is filed, or otherwise the petition shall be deemed to be granted; provided, that if the petition is deemed to be granted by operation of law, the Commission shall not thereby be precluded from finding and ordering, in a subsequent proceeding initiated by the Commission, and after notice and hearing, that the service is not competitive based on the criteria set forth in this subsection.

*Id.* Thus, the Commission can, based on the evidence before it and in light of the statutory standard set forth above, grant or deny a petition seeking to declare a tariffed service to be competitive for the identified customer segment, or it can allow that petition to take effect by operation of law, subject to later review. ComEd respectfully submits that the evidence in this proceeding more than meets the statutory standard for declaring service under Rate 6L to be competitive for those customers with loads of 3 MW or more, and thus its Petition should be either granted outright, or allowed into effect by operation of law.

The impact of granting ComEd's Petition, or allowing it into effect by operation of law, is set forth in Section 16-113(b), which provides that:

[a]ny customer . . . who is taking a tariffed service that is declared to be a competitive service pursuant to subsection (a) of this Section shall be entitled to continue to take the service from the electric utility on a tariffed basis for a period of 3 years following the date that the service is declared competitive. . . . This subsection shall not require the electric utility to offer or provide on a tariffed basis any service to any customer . . . that was not taking such service on a tariffed basis on the date the service was declared to be competitive.

*See* 220 ILCS 5/16-113(b). Thus, the limited number of customers remaining on Rate 6L can remain on that rate for a three year transition period, which ComEd has proposed to begin June 2003. Those customers that have chosen competitive alternatives, however, would not longer have the option of again taking service under Rate 6L after that date.

**B. Other Sections of the Act: Declaring Rate 6L Competitive Now Is Consistent With The Purposes and Structure of the 1997 Restructuring Act**

When it enacted the 1997 Restructuring Act, the General Assembly recognized that “[c]ompetition in the electric services market may create opportunities for new products and services for customers and lower costs for users of electricity.” 220 ILCS 5/16-101A(b). It included a number of provisions in the Act that would allow for a gradual transition to more competitive energy markets, and also provisions that would safeguard consumers during the transition. One of the safeguards is the requirement that utilities continue to provide “each tariffed service that it offered as a distinct and identifiable service on the effective date” of the 1997 Restructuring Act “until the service is . . . declared competitive pursuant to Section 16-113.” 220 ILCS 5/16-103(a). The

ability of utilities to obtain a competitive declaration and cease offering such service, is one of the key transitional provisions.

A number of provision in the Restructuring Act reflected the General Assembly's intention to (i) let markets evolve through customer choice, (ii) alter "[l]ong-standing regulatory relationships" in order to accommodate competition, and (iii) prevent "new entrants into the industry" from taking "unreasonable advantage of the investments made by the formerly regulated industry." *See* 220 ILCS 5/16-101A(b) and (c). These included Section 16-113, the requirement that utilities offer unbundled delivery services pursuant to sections 16-104 and 16-108 and real-time pricing pursuant to Section 16-107, and the prohibition in Section 16-103(e) that "[t]he Commission shall not require an electric utility to offer any tariffed service other than the services required by this Section, and shall not require an electric utility to offer any competitive service." *See* 220 ILCS 5/16-103(a) and (e).

Overall, the General Assembly charged the Commission with acting "to promote the development of an effectively competitive electricity market that operates efficiently and is equitable to all consumers." 220 ILCS 5/16-101A(d). The evidence shows that declaring Rate 6L service to be competitive for customers in the 3 MW and above segment is necessary to meeting this objective. Failure to do so is neither consistent with efficient and effective competition, nor equitable to others. *See, e.g.,* ComEd Ex. 10 at 12-13; ComEd Ex. 5 at 20-22; ComEd Ex. 4 at 6-12; ComEd Ex. 14 at 6, 10-15.

## **II. Evidence Relating to Section 16-113: The Statutory Requirements Are Clearly Satisfied**

### **A. Identifiable Customer Segment: Rate 6L Eligible Customers With Peak Demands of 3 MW or More**

ComEd's Petition seeks a declaration that service under Rate 6L is competitive for customers with peak period demands of 3 MW or more. This group of customers is an "an identifiable customer segment or group of customers" as those terms are used in Section 16-113. Customers included in this group can -- and if ComEd's proposal is accepted, will -- be identified by examining annual usage data in a manner generally consistent with the way eligibility for Rate 6L is determined today. *See* ComEd Ex. 1 at 4; ComEd Ex. 7 at 7. If a customer's total peak period demand reaches 3 MW or greater in three or more monthly billing periods, that customer would be eligible to remain on Rate 6L only if it has been continuously taking service on Rate 6L since the first day of the customer's June 2003 monthly billing period. ComEd Ex. 1 at 4.

Based upon 2001 data, the 3 MW and greater group consists of 373 customer locations. *See* ComEd Ex. 7 at 6. The customers in the 3 MW and above group are ComEd's largest, and most sophisticated, customers. Over 80% of the customers in this group are participating in curtailment programs this year. *See* ComEd Ex. 7 at 8. The high level of participation in such programs among customers in this group is indicative of their understanding of their energy needs and their ability to manage their energy usage to their economic benefit. *See* ComEd Ex. 7 at 9; ComEd Ex. 13 at 22.

**B. Reasonably Equivalent Substitute Service That Is Reasonably Available: Customer Choice Proves That Substitute Services Reasonably Equivalent to Rate 6L Are Available**

The reasonable availability of reasonably equivalent substitute services for customers in the 3 MW and above group is demonstrated in this case by “the most direct test – the choices of customers.” *See* ComEd. Ex. 14 at 11. The data regarding the choices made by customers in the 3 MW and greater segment tells a compelling story. This data shows that the vast majority of the customers in the 3 MW or greater group – over 70% – have already opted to take unbundled services in lieu of Rate 6L. Of those choosing unbundled services, 44% were, as of June 2002, taking flowed-power from a RES not affiliated with ComEd. *See* ComEd Ex. 7 at 11 and Attachments PRC/DFK 1 and 4; Tr. at 509-10 (Crumrine/Kelter). That percentage has likely increased since the data included in ComEd Ex. 7 was compiled. *See* Tr. at 363 (O’Connor). In any event, as of June 2002, only 29% of the total 3 MW and above group remains on bundled Rate 6L service. Of those customers still on bundled Rate 6L service, over 10% are also on special contracts, their eligibility for which shows that they had viable competitive alternatives to ComEd bundled service – typically the economical provision of on-site generation – even before the Restructuring Act was implemented. *See* ComEd Ex. 7 at 14.

The fact that a significant number of customers in the 3 MW and greater segment have chosen to take RES-supplied electric power and energy confirms the competitiveness of the alternative offerings already available to these customers. *See* ComEd Ex. 7 at 5. That fact also confirms that the combination of unbundled delivery services and RES-supplied power and energy is deemed by customers in the 3 MW and

greater group to be a reasonably equivalent substitute for Rate 6L service. *Id.*; Tr. at 570-73, 623 (Crumrine/Kelter); Tr. at 1122-23 (Landon). And, the fact that the number of customers in the 3 MW and greater group opting to take flowed power from a RES has increased steadily over time (*see* Attachment PRC/DFK R-2 to ComEd Ex. 8) belies the notion that either Customer Transition Charges (“CTCs”) or any other aspect of the current regulatory regime prevents the development of comparable alternative products at prices that are attractive to customers. *See* ComEd Ex. 14 at 13.

Finally, it should be noted that relying on this compelling evidence of customer choice also avoids the difficulties inherent in the alternative approaches to establishing the existence of reasonably equivalent substitute services suggested by the other parties. Many parties appear to contend that ComEd “should have” presented evidence concerning the terms of the actual contracts between RESs and their customers, and that ComEd’s Petition is defective because it has not shown that unaffiliated RESs are offering “all-in,” fixed rate services that are in all respects identical to Rate 6L. *See, e.g.,* IIEC Ex. 4.0 at 5; Tr. at 572-578 (Crumrine/Kelter); CACC Ex. 1 at 11.

Interpreting Section 16-113 as imposing requirements that the utility document the specific terms of the reasonably equivalent substitute services offered by its competitors, and that the utility show that those terms are essentially identical to the tariffed service at issue, is inappropriate for a number of reasons. First, such an approach is not feasible because the utility does not – and should not – have access to agreements between competitive retail suppliers and their customers, a fact which is begrudgingly recognized by the very parties that have advanced this standard. *See* Tr. at 934-36 (Stephens); Tr. at 316-17 (Fults). *See also* ComEd Ex. 8 at 8; Tr. at 574

(Crumrine/Kelter); Tr. 1092-93 (Landon). Second, it is both unrealistic and inconsistent with the statutory standard of Section 16-113 to condition a competitive declaration on a showing of the availability of competitive services that are essentially identical to the regulatory rate when the statute speaks of “reasonably equivalent substitute service” at “comparable,” not identical, rates. *See* ComEd Ex. 8 at 6; NewEnergy Ex. 2 at 3.

Rate 6L is a service designed under the regulatory structure that existed prior to the Restructuring Act. *See* ComEd Ex. 7 at 6. Given the origin and “one-size-fits-all” approach of that tariffed service, it is not surprising that RESs have not offered services identical to Rate 6L. Instead, RESs have, as one would expect in a competitive environment, focused on providing products that are more individually tailored to meet specific customer requirements. Nonetheless, there is ample evidence that RESs are capable of offering – and in some cases already do offer – guaranteed savings, fixed-price offerings. ComEd Ex. 6-7; ComEd Ex. 14 at 5-6; ComEd Ex. 13 at 19-20 and Attachment JHL-2; NewEnergy Ex. 2 at 2-5; IIEC Ex. 4.0 at 7; Tr. at 1037 (Landon); Tr. at 380-81 (O’Connor).

On the other hand, the difficulty that would be inherent in trying to obtain access to confidential and competitively-sensitive information and make subjective determinations about whether privately-negotiated terms are reasonably equivalent to a tariffed service is obviated by a simple look at customers’ behavior. The proof exists in the recognition that customers would not willingly have switched from bundled service like Rate 6L to an alternative unless they had concluded that the alternative to which they were switching met their needs and, therefore, was a reasonably equivalent substitute from their perspective. If consumer autonomy and choice are to be given proper respect,



the reasonable equivalence of the available substitute services to Rate 6L must be inferred from the widespread customer selection of those alternatives. *See* Tr. at 622-23 (Crumrine/Kelter); ComEd Ex. 13 at 19. Given the evidence presented that significant numbers of customers in the 3 MW and above group have switched to unaffiliated RES offerings, the Commission can therefore definitively and reasonably conclude that customers – who are in the best position to assess whether their needs are being met – have chosen services that are reasonably equivalent to the service offered under Rate 6L.

**C. Comparable Price: Customer Choice of RES Offerings Show They Are Comparably Priced**

Just as evidence of customer choice confirms the reasonable equivalence of RES offering to service under Rate 6L, customer willingness to select those offerings in significant numbers conclusively demonstrates that they are priced comparably to – and in all likelihood below – Rate 6L. *See* Tr. at 572-73 (Crumrine/Kelter); Tr. at 1123-24 (Landon); ComEd Ex. 13 at 18-19. While the pricing of RES offerings presumably varies depending on the amount of risk the customer wishes to assume, actual observed customer selection of RES offerings confirms that customers are able to locate offerings that balance price and risk in ways that are – in their view – comparable to Rate 6L. In some cases, that balance will favor price certainty over a potentially lower overall price level. In other cases, that balance will permit variability in price in order to obtain expected overall savings. Whatever balance is struck, the customers’ willingness to go forward under the terms they select shows that they deem them fundamentally to be comparable to Rate 6L. As Dr. O’Connor of NewEnergy put it, “[t]he proof of the pudding is in the eating.” NewEnergy Ex. 2 at 5.

**D. Other Providers: The Number of Active RESs Serving Customers in the 3 MW and Greater Group Clearly Satisfies the Statutory Standard**

Section 16-113 requires that reasonably equivalent substitute services be reasonably available at comparable prices “from *one or more* providers other than the electric utility or an affiliate of the electric utility.” *See* 220 ILCS 5/16-113(a) (emphasis added). Given that five RESs unaffiliated with ComEd are already serving customers in the 3 MW and above group, this requirement is plainly satisfied in this case, notwithstanding the speculation regarding “uncertainties” that other parties offer. *See* ComEd Ex. 7 at 12; ComEd Ex. 13 at 20; IIEC Ex. 4.0 at 14.

Furthermore, there are many other potential providers that could, and likely will, provide service to customers in the 3 MW and above group as demand for such service grows. ComEd Ex. 7 at 12-14. The potential competitors include RESs that are already certified by the Commission and active in the ComEd control area, as well as other firms that are active elsewhere that could enter the market in ComEd’s control area if the competitive conditions in the marketplace were favorable. The most telling evidence in this regard is that two new RESs have been approved for operation in ComEd’s service territory in the last few months. *See* ComEd Ex. 7 at 12-13. Thus, entry by new competitors is not merely hypothetical, it is a reality.

**E. Loss of Business: ComEd Has Already Lost Significant Business Among Customers in the 3 MW and Greater Group to RESs Not Affiliated With ComEd**

Given the level of actual customer switching observed, it is beyond dispute that ComEd “has lost ... business for [Rate 6L] service to the other provider or

providers” that are offering competitive alternatives to that service. *See* ComEd Ex. 7 at 6. Of the 373 customers expected to be affected by this petition, 117 customers, representing 4,545 GWhs of consumption on annual basis, have moved from ComEd to non-affiliate RES supplied electric power and energy as of the June 2002 monthly billing period. *Id.* ComEd’s most recent report filed with the Commission pursuant to Section 16-130 of the Act indicates that in 2001 ComEd lost almost \$200 million in revenue from customers in the 3 MW and greater segment as result of those customers choosing unbundled service. *See* ComEd Ex. 7 at 6 and Attachment PRC/DFK 2.

**F. Transmission Capacity: Ample Generation and Transmission Resources Assure The Continued Availability of Reasonably Equivalent Substitutes to Rate 6L**

Section 16-113 suggests that in evaluating a petition to declare a tariffed service competition, the Commission should consider “whether there is adequate transmission capacity into the service area of the petitioning electric utility to make electric power and energy reasonably available to the customer segment or group in the defined geographical area from one or more providers other than the electric utility or an affiliate of the electric utility.” 220 ILCS 5/16-113(a). The evidence presented in this case clearly shows the existence of an ample supply of power and energy and adequate transmission capacity.

First, the record evidence indicates that there is more than enough supply of power and energy accessible within ComEd’s control area to ensure that RESs and their customers will have ready access to competitively priced power generated locally. *See* ComEd Ex. 5 at 5-12.

Second, the evidence shows that the ComEd control area is interconnected to generating resources throughout the broader region, and that sufficient transmission capacity exists to import electric power and energy from those sources into the ComEd control area. In this respect the evidence demonstrates that ComEd is interconnected to nine other utilities that are in turn interconnected to other utilities in the Eastern Interconnect, including to other MAIN (Mid-America Interconnected Network) members to the north and south, to MAPP (Mid-Continent Area Power Pool) utilities to the west, and to ECAR (the East Central Area Reliability Council) utilities to the east. *See* ComEd Ex. 5 at 13. The evidence also describes the transmission capacity available to import electric power and energy from other control areas. *See id.* at 15. Through the use of simultaneous import capability measures, ComEd is able to estimate how much load in ComEd's territory can be served from the sources outside the territory. *See id.* In this case, such an analysis shows that the predicted simultaneous import capability for the summer of 2003 is approximately 4,700 MW. *See id.* Thus, substantial demand from within ComEd's service area – far in excess of the total demand of the 3 MW and greater group – can be served from resources throughout the region.

Third, the record testimony details that the development of Regional Transmission Organizations (RTOs) should encourage even more efficient use of the transmission grid and increase transmission capacity into the ComEd control area. *See id.* at 16-17. As evidence of its commitment to this development, on May 28, 2002, ComEd notified the FERC of its intent to join the PJM Interconnection, LLC, as a member of an independent transmission company (ITC), or independently should the ITC formation effort fail. *See id.* at 17. PJM is experienced with operating workable liquid

electric markets and with regional transmission operations and planning. With PJM's market structures and the operating expertise, ComEd believes, and has been so assured by PJM personnel, that ComEd will be able to implement and extend such markets to its customers in an expeditious manner. *See* ComEd Ex. 12 at 4-10; ComEd Ex. 15 at 17.

Suggestions that the transmission capacity may be inadequate are without merit. For example, in his written testimony, Dr. Haas stated that “[o]f the 4700 MW of simultaneous import capacity into ComEd’s system, a significant portion is not available, on a firm basis to supply those customers 3 MW and larger with power and energy from outside ComEd’s service territory.” ICC Staff Ex. 3.00 at 29. This is simply not true. *See* ComEd Ex. 6 at 5-6. That Dr. Haas’s assertion is incorrect is demonstrated by the fact that at the time of ComEd’s load peak this year, ComEd’s transmission system was delivering 4,000 MW of generation to customers *outside* the ComEd control area. *See id.* This confirms both that capacity within ComEd’s control area is more than adequate to meet the needs of customers in the ComEd control area even in peak periods, but also that there is a significant outflow of power at the most critical times, which has the effect of increasing net import capability during those times. *See id.* Thus, transmission capacity is adequate as well.

**G. Customer Switching: The Data Presented by ComEd Is Consistent With The Long-Term Trend Toward RES Supply**

The fact that customers have been switching from Rate 6L service in large numbers is irrefutable. Other parties have attempted to undermine the significance of this data by reference to (1) the use of PPO service by customers and their RESs, and (2) the alleged effect of Exelon Generation’s May 2002 wholesale offering on the integrity

and meaning of the data. However, a close examination of both of these factors confirms both the intensity of competitive forces in the marketplace and the fact that customers in this segment generally prefer alternatives to Rate 6L.

ComEd introduced extensive evidence that RESs are using its PPO service as a hedge, or source of supply for those customers that have assigned their PPO option. ComEd Ex. 6 at Attachment 2. Many customers in this situation continue to view their RES as their supplier. For those customers that are directly on the PPO (*i.e.*, customers that enrolled on the PPO without the involvement of a RES agent or assignee), while they are not taking service from a provider unaffiliated with ComEd, they nonetheless have made a significant entry into the competitive marketplace by leaving traditional bundled service. In doing so, they have demonstrated both their ability to assess the opportunities presented to them and their willingness to change traditional procurement strategies in order to take advantage of potential savings opportunities. Thus, the fact that a significant number of customers have chosen to leave Rate 6L even for service on the PPO is a factor, albeit not a decisive one, that the Commission should view positively in considering ComEd's Petition. *See* Tr. at 530-31 (Crumrine/Kelter).

Second, the evidence shows that ComEd's affiliate Exelon Generation made an arrangement in May 2002 with various RESs who were threatening to return customers to the PPO in the face of changing market prices. The concern at that time fundamentally reflected the dynamic between RES supplied power and the PPO, and did not directly involve Rate 6L, which is the subject of this Petition. The threat made by RESs, and Exelon's response, evidence both the intensity of the competitive dynamics in the marketplace, and the importance of limiting the availability of ComEd's tariffed rates,

including the PPO as well as Rate 6L, to those customers that have viable competitive alternatives. ComEd witness Arlene Juracek described the situation confronting Exelon Generation as follows:

[Exelon Generation] is a very rational portfolio manager and is faced with some fairly awesome responsibilities in terms of the load it needs to serve, particularly, in the ComEd area. It engages in transactions with counterparties every day, depending on the cost and risk profiles that are presented with respect to those transactions.

We had apparently some RESs who indicated in their discussions with [Exelon Generation] that they would likely put customers back on the PPO, or could. . . .

In this case, it made sense to not have to go out into the marketplace and buy power at the prices presented to [Exelon Generation] at that particular point in time, and that there was, in essence, a curtailment agreement worked out with [Exelon Generation and] the RESes so that [the RESs] would not put their load on the PPO.

Tr. at 812-813 (Juracek). In short, the situation in May 2002 was another example of RESs' strategic use of regulated rates such as the PPO as supply options to maximize their profits. *See* Tr. at 830-31 (Juracek); ComEd Ex. 6 at 6-8; ComEd Ex. 5 at 23-26. Exelon Generation's self-interested response to such behavior illustrates – it does not diminish – the competitiveness of the marketplace.

Moreover, even if RESs would have switched some of their customers back to the PPO in the absence of Exelon Generation's offer, such transient movement would not have suggested a failure of the competitive market. By and large, the customers affected by such an assignment to the PPO would have retained their relationship with the RESs, who would utilize ComEd's retail tariffs as a supply source rather than procuring power and energy for their customers from other wholesale sources. ComEd. Ex. 6 at 6-8. To the customers in question, the sourcing strategy employed by

the RES would have been of little or no consequence and would not have reflected those customers' withdrawal from the competitive marketplace. Tr. at 1045-48 (Landon).

The consistency of the trend toward customer reliance on RES-supplied power in the 3 MW and above group also undercuts the notion that Exelon Generation's actions had a material effect on the integrity of data relied upon by ComEd or upon availability of reasonably equivalent substitute services to Rate 6L. *See* Tr. at 1030-32 (Landon). Indeed, the trend of increasing RES enrollments among eligible customers in ComEd's service territory has been largely consistent throughout periods when full requirements wholesale offerings have been available (*i.e.*, June 2000 to May 2001) and in periods when such offerings have not been available (*i.e.*, June 2001 through May 2002). *See* ComEd Ex. 7, Attachment PRC-DFK 7. Furthermore, to the extent that Exelon Generation's offering had any effect, it was, as noted above, to prevent RESs from utilizing ComEd's Rider PPO as a wholesale power source in a way that would have been uneconomic from Exelon Generation's perspective. Tr. at 812-14 (Juracek); Tr. at 429-31, 434 (McNeil/Sterling). Nothing in the market dynamics that prevailed during this time period was shown to have made Rate 6L more attractive, and there is no reason to believe that, in the absence of Exelon Generation's offering, customers would have returned in any significant number to Rate 6L. Tr. at 746-47 (Haas).

#### **H. Wholesale Market Development: Existing and Expected Wholesale Conditions Ensure Vibrant Retail Competition**

The Act does not explicitly require an evaluation of the wholesale markets for electric power and energy. Rather, in looking at the availability of alternatives to customers, it focuses on the retail level. *See* 220 ILCS 5/16-113(a). However, ComEd



has presented evidence demonstrating that competition at the wholesale level is vigorous and therefore a positive influence on the current and future retail conditions. After all the record evidence is reviewed, the fact remains that there is more than adequate supply and motivated sellers at the wholesale level to provide the supply needed by retail suppliers to service the 900 MW of load of the 3 MW and greater group that is presently on Rate 6L. *See ComEd Ex. 5 at 5.*

As explained by ComEd witnesses William McNeil and Jennifer Sterling, since restructuring began in 1999, there have been two noticeable changes in the Northern Illinois generation marketplace. First, generation ownership has become much more diverse. In 1999, ComEd owned 92% of the generation in its control area. *See id.* at 9. Since then, ComEd has divested itself of generation. Moreover, it is projected that by the end of 2004 Exelon will only own 30% of the generation in the control area (with Dominion owning 9% and EME owning 28%) and that there will be at least a dozen entities overall that own generation in the ComEd service territory. *See id.* Second, there has been a significant increase in intermediate and peaking generation facilities. In 1998, 80% of the capacity mix was baseload capacity. *See id.* at 10. By the end of 2004, approximately 50% of the capacity will be baseload, 20% will be intermediate cycle, and 30% will be peaking. *See id.*

Furthermore, there has been significant *development* of new IPP generation facilities in Northern Illinois to serve expanding needs. *See ComEd Ex. 5 at 11.* This development began in 1999, shortly after ComEd announced locations within its service territory where it would be advantageous for new power plants to be developed. *See id.* Between 1999 and 2001, 5,000 MW of new generation facilities were constructed

in Northern Illinois, and an additional 3,500 MW is expected to be operational by the end of 2002. *See id.* Approximately 4,300 MW of generation is in the queue for service by the end of 2004. *See id.* The expected peak demand for the ComEd system for 2002 is 21,900 MW. *See id.* at 12. ComEd's peak demand is expected to grow between 1.5% and 2% annually through 2010, at which point the peak demand is forecasted to reach 25,700 MW. *See ComEd Ex. 5 at 12.* The current level of 29,000 MW of wholesale generation in ComEd's service territory is expected to grow to 33,000 MW by the end of 2004. *See id.* Therefore, the existing generation and the new IPP facilities that are expected to be built in the ComEd service area will be more than sufficient to meet the peak demand for the ComEd Control Area for many years into the future. *See id.*

Additional record evidence confirms the availability of adequate supply. For example, the MAIN load and Resource Audit Report to the Board of Directors (*see ComEd Ex. 7, Attachment PRC/DFK 5*) indicates that the reserve margins in MAIN were likely to exceed the long-term planning margin of 17 to 20 percent throughout the summer of 2002. *See ComEd Ex. 13 at 20.* This evidence strongly supports the conclusion that there will be sufficient generation resources to ensure that market prices reflect competitive conditions going forward. The IIEC and other intervenors' argument that there may not be sufficient competition in the wholesale segment of the market over simplifies and does not accurately represent how the market works. *See ComEd Ex. 6 at 3-4 and Attachment 1.* The fact is that wholesale supply is expected to exceed demand in ComEd's territory at least until 2010, and there is a strong economic incentive for generators to search out buyers in order to maximize their production. *See id.*; *ComEd Ex. 5 at 12.*

Finally, the record establishes that this vigorous wholesale market is accessible to RESs within ComEd's service area. The record evidence shows that there are a number of ways RESs can acquire the necessary resources to supply their customers' needs. *See* ComEd Ex. 14 at 12; ComEd Ex. 5 at 18. These include engaging in direct bilateral transactions with generators and contacting brokers who match products and needs as between buyers and sellers. *See* ComEd Ex. 14 at 12; ComEd Ex. 6 at Attachment 1. The record also indicates a flourishing forward market in the Midwest region. *See id.* Over-the counter voice brokers, including Prebon, Amerex, and NatSource, are active in the ComEd, Cinergy, and AEP areas, matching buyers and sellers. *See id.* Electronic exchanges such as TradeSpark and IntercontinentalExchange provide an additional trading platform for hedging and risk management activities. *See id.* Furthermore, with ComEd's pending membership in PJM, a centralized marketplace for purchases and sales will also become an option. *See* ComEd Ex. 14 at 12. These evolving mechanisms will increase the strength of an already vigorous wholesale market.

**I. Retail Market Development: The Retail Segment is Headed in the Right Direction**

As noted above, the statutory requirement that there be "one or more providers other than the utility or an affiliate of the utility" of services that are reasonably equivalent to that provided by ComEd under Rate 6L has been clearly satisfied in this case. Thus, further inquiry into the state of retail development is not required. However, regardless of the need for such an inquiry, a number of factors make clear that the retail segment of the market in ComEd's control area has developed appropriately and is

sufficient to support the competitive provision of service to customers in the 3 MW and greater segment for the foreseeable future.

First, the number of RESs qualified and active in ComEd's control area has increased steadily over time, showing that RESs have been willing to invest to participate in this marketplace and have largely remained active once they have entered. *See* ComEd Ex. 7 at 12-13. The recent acquisition of New Energy by the Constellation Energy Group, along with the growth in new merchant generation capacity, further confirms the ongoing development of the marketplace. Quite simply, investors would not be investing their resources in Illinois if the prospects for competitive development at the retail level were not bright here.

Second, the firms that are active in serving customers in the 3 MW and above group are capable of serving them. This is confirmed both by the fact that RESs not affiliated with ComEd are already serving a large number of the customers in the group, and by the fact that resources necessary for RESs to continue to do so are available. *See* ComEd Ex. 5 at 5-8. The capability of these firms is also illustrated by the types of offers that they have publicized. *See* ComEd Ex. 13 at 20 and Attachment JHL-2.

Third, existing regulatory features like the CTC and the Market Value Index (MVI) methodology for determining the MVECs used in setting CTCs and PPO prices are not the insurmountable impediments to competition that other parties claim them to be. *See, e.g.,* BOMA/CACC Ex. 1.0 at 8-10; Tr. at 356 (O'Connor). A high level of switching has already occurred in the context of the regulatory regime about

which the other parties complain, showing that features like the CTC do not deprive providers of the ability to offer, and customers of the ability to obtain, attractive alternatives to Rate 6L service. *See* ComEd Ex. 14 at 13. Indeed, the fact that the degree of customer switching is greater in ComEd’s service territory than in other areas of the state in which CTCs are not collected (*see* Tr. at 1017 (Bodmer)) confirms the fact that CTCs themselves are not a barrier to competition. The potential for customers to achieve additional significant savings by opting for competitive alternatives to Rate 6L service over the next several years suggests that neither the CTC, nor potential increases in delivery and transmission services rates, will stall the existing momentum towards competition. *See* ComEd Ex. 8 at 11-14 and Attachments PRC/DFK R-1 and R-2. Moreover, the Commission will be reviewing the MVI methodology in another proceeding scheduled to begin this fall. *See* ComEd Ex. 6 at 11; Tr. at 389-90 (O’Connor).

Fourth, the other “uncertainties” surrounding retail competition to which other parties refer are largely the result, not of market conditions, but rather of “regulatory” conditions – such as the ambiguity introduced by the decision of the Appellate Court of Illinois, Fifth District, in *Local Union Nos. 15, 51, and 702, Int’l Bhd. of Elec. Workers v. Illinois Commerce Commission*, 331 Ill. App. 3d 607, 772 N.E.2d 340 (5th Dist. 2002), regarding the reciprocity requirement of Section 16-115(d)(5).<sup>1</sup> In light of the commitment of Illinois policymakers to successfully introduce competition into the Illinois electric industry and the success, up to now, of RESs operating in ComEd’s

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<sup>1</sup> Multiple petitions for leave to appeal this decision are presently pending before the Illinois Supreme Court, including one filed by the Illinois Commerce Commission. Tr. at 710-11 (Haas); Tr. at 944-45 (Stephens).

control area to obtain and retain customers, such “uncertainties” appear unlikely to present insurmountable problems in the future.

Finally, by providing the proper incentives and signals to market participants that the transition to full competition is progressing, and that there will be growing demand for market-based alternatives, acceptance of ComEd’s Petition will itself further support the development of competition at the retail level. *See* ComEd Ex. 13 at 11-13, 26; Tr. at 1071-72 (Landon). Given the size and attractiveness of the 3 MW and greater customer segment from a provider perspective (*see* ComEd Ex. 5 at 8-9 and ComEd Ex. 13 at 16), acceptance of ComEd’s Petition is likely to lead to the introduction of new and varied products responsive to their needs. *See* ComEd Ex. 13 at 16; ComEd Ex. 5 at 20-22. And by reducing the amount of capacity that ComEd is required to tie-up in order to serve an uncertain load on Rate 6L, the resources available in the marketplace to support such new and innovative offerings by RESs will be increased. *See* ComEd Ex. 10 at 11-13.

#### **J. Customer/Supplier Reaction**

Section 16-113 does not require the Commission to consider explicitly the reaction of customers and suppliers to ComEd’s Petition. The omission of such a requirement of customer support is understandable since, from a short-term perspective, resistance to losing a free, fixed-price hedge against the possibility of future rising market prices is to be expected. That being said, because of the nature of this proceeding, one cannot conclude that there is widespread opposition (or support) among customers and suppliers to ComEd’s proposal. With respect to the suppliers, for example, of the two that have actively participated in this proceeding up to now, one (NewEnergy) supports

ComEd's proposal in the belief that it will provide an incentive for ComEd to address perceived shortcoming in the MVI methodology, while the other (MidAmerican) "supports ComEd's efforts to open its territory to full retail competition and exit the merchant function," but states that it will oppose ComEd's Petition until such time as ComEd fully resolves MidAmerican's concerns regarding the MVI methodology.<sup>2</sup> See MidAmerican Ex. 1 at 5. Apart from the desire to "incent" changes in the MVI methodology, Dr. O'Connor agreed that ComEd had met the statutory requirements for declaring Rate 6L competitive:

Q. [ALJ Casey] At the time the company filed its petition in this matter, at that snapshot in time, is it your opinion whether or not the – they met the statutory criteria in Section 16-113?

A. I think the Commission could have made that finding. I'm not sure I would have encouraged it, and I don't make – I don't encourage it now.

Q. Whether the Commission makes that finding or not, was it – is it your opinion whether or not the company had met the criteria?

A. It would have been a close call but probably at that point in time, yes.

Q. At the time you filed your testimony, would you – at that point in time had the company met the criteria?

A. If you just looked at the pure snapshot and you only looked at the penetration of flowed power, yes, you would make that finding.

Q. And as you sit here today, that snapshot, has the company met the statutory criteria?

A. If the only thing you're taking into consideration is the implication of the amount of flowed power, the penetration, it would suggest you could make that finding, yes.

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<sup>2</sup> As noted above, these issues will be the subject of another Commission proceeding that was provided for in the Commission's April 13, 2001 Order in consolidated dockets 00-0395 and 00-461. See Tr. at 388-90 (O'Connor).

Q. (Mr. Robertson) At the point in time when the market value changed this year, if you took a snapshot at that time, would they have met the criteria?

A. Again, close call, you could come down either side of it. I would tend to say yes if I had to push it very close, yes.

Tr. at 347-349 (O'Connor). The views of other suppliers are unknown at this time, although one might reasonably expect them to have more actively participated if they strongly opposed ComEd's Petition.

The same ambiguity exists with respect to the customer reaction to ComEd's Petition. While the specific industrial customers that have participated in this proceeding under the banners of the IIEC and CACC are opposed to ComEd's Petition, those customers represent only 5% of the customer locations in the 3 MW and above group and, in the case of the IIEC, do not even represent the entirety of its own membership. *See* ComEd Ex. 8 at 19; Tr. at 947-58 (colloquy). The remainder of the 3 MW and above group – which represent the overwhelming majority of the total group of customers affected – have neither objected to, nor voiced their agreement with, ComEd's proposal. In the face of this evidence, it is impossible to conclude that customers either generally oppose, or generally support, ComEd's Petition. What is clear, however, is that the experiences of those industrial customers that have chosen to actively participate in this proceeding confirm the widespread availability of alternatives to Rate 6L service. Indeed, 67% of the industrial customers that have actively participated in this proceeding are presently taking service from a RES that is not affiliated with ComEd. *See* ComEd Ex. 8 at 19. While those customers may want to maintain in perpetuity their free option to return to the fixed price rates of Rate 6L as hedge against market price risk, the fact that such a large percentage of those customers have found RES offerings to be attractive



enough to switch from Rate 6L in the first instance demonstrates the availability of reasonably equivalent substitute services at prices comparable to Rate 6L.

**K. Other**

*See* Section V, *infra*.

**III. Proposed Amendments to 6L: The Staff's Suggested Modifications to ComEd's Proposal Go Beyond What the Restructuring Act Requires and Are Inappropriate**

The Staff of the Illinois Commerce Commission recommended several changes to the amendments to Rate 6L that ComEd proposed to implement the requested declaration. Although ComEd attempted to work out a compromise on these issues with Staff, it was unable to do so. Each of the changes recommended by Staff is either inconsistent with the Act or ComEd's existing tariffs. The changes recommended by Staff are also not consistent with the accounting concerns raised by Staff witness Ebrey, which are discussed further in Section IV, *infra*. Accordingly, absent an agreement between the parties, Staff's proposed amendments should not be adopted.

**A. New Customers**

Staff witness Haas recommended that new customers that have loads of 3 MW and greater be allowed to initiate service under Rate 6L during the three year transition period required by Section 16-113(b). *See* Staff Ex. 3.00 at 37. That section provides only that those customers that "are taking a tariffed service that is declared to be a competitive service . . . shall be entitled to continue to take the service from the electric utility for a period of 3 years following the date that the service is declared competitive . . ." The section also explicitly states that it shall not be construed

to require the electric utility to “offer or provide on a tariffed basis any service” to any other customer “that was not taking such service on a tariffed basis on the date the service was declared to be competitive.” Thus Staff’s requested amendment is not consistent with the transition envisioned by the General Assembly. In addition, there is no evidence that such customers will need or want such service.

Nonetheless, ComEd indicated that it was willing to work out an accommodation on this issue if Staff were to agree that such service should not be viewed as a “competitive service” for accounting purposes. *See* ComEd Ex. 11 at 8. ComEd was unable to work out such a stipulation. For all of these reasons, the requested amendment should be denied.

**B. Extension Of Transition Period For Customers On Rate**

Staff witness Haas also requested that the grandfathering period be extended beyond the three-year period provided for in Section 16-113(b) through the end of 2006. *See* Staff Ex. 3.00 at 37. Again, such an extension is not required by the terms of the statute, and no clear need for it has been shown. In addition, ComEd has been unable to work out with Staff a stipulation that would address the accounting for such service. Finally, such an extension would create costly uncertainty with respect to ComEd’s load serving obligations (*see* ComEd Ex. 10 at 10-11; ComEd Ex. 11 at 8). Accordingly, this proposed amendment should be denied as well.

**C. Extension Of Return Option For Customers Not On Rate**

Staff witness Haas further suggested that customers that are currently on long-term contracts for RES supply maintain a free option to return to Rate 6L at the end

of those contracts. *See* Staff Ex. 3.00 at 34. This too is inconsistent with the terms of the Act and again Staff has failed to resolve the apparent inconsistency between this recommendation and its accounting concerns. These customers have already found alternatives to Rate 6L, alternatives that they were comfortable locking into for long periods of time. Thus Staff's recommendation should be denied.

#### **D. Eligibility Criteria**

Finally, Staff also proposed changes in the criteria to be used to determine when a customer with loads of 3 MW or more is no longer eligible for service under Rate 6L or could again become eligible based on reductions in demand. *See* Staff Ex. 3.00 at 37. The criteria proposed by ComEd are, however, consistent with already existing provisions of Rate 6L that are used to determine a customer's eligibility for electing other rate options based on reductions in demand. Staff has not explained why there should be a departure from these criteria, which were previously reviewed and approved by the Commission, and ComEd has been unable to agree with Staff on alternative criteria. ComEd Ex. 2 at 6-7. Accordingly, the recommendations made by Staff in this regard should be denied as well.

### **IV. Accounting Issues: If Rate 6L Is Declared Competitive, Traditional Regulatory Accounting Treatment Would Be Appropriate for Its Continued Offering to the Affected Class on a Tariffed, Regulated Basis.**

#### **A. Accounting Treatment of Revenues and Expenses**

Staff witness Ebrey has raised the issue of the appropriate accounting treatment for revenues and expenses associated with the continued provision of Rate 6L service to customers with demands of 3 MW or greater if the Commission grants

ComEd's Petition. Staff Ex. 1.00 at 2. However, it is ComEd's intention to continue to offer Rate 6L service to customers with demands of 3 MW or greater only during the statutorily required 3-year "grandfather" period, which ComEd has proposed to begin with the June 2003 billing periods. Such offering would be under tariff and subject to all the restrictions on regulated service offerings contained in Article IX of the Public Utilities Act. Therefore, traditional "above the line" accounting treatment of Rate 6L revenues and expenses in those cases is appropriate. Staff appears to agree that, under these circumstances, the continued treatment of the associated revenues and expenses as "regulated" is appropriate. *See id.* at 3.

In addition, for these very reasons, the Commission should reject, as unnecessary, Staff's request that the Commission order ComEd to submit a report of the number of customers remaining on Rate 6L after the 3-year statutory period and a methodology for allocating costs associated with Rate 6L as a competitive non-tariffed service. Staff Ex. 1.00 at 5-6. ComEd's Petition does not contemplate that any customers with loads of 3 MW or more would remain on Rate 6L after the 3-year grandfather period. Indeed, its proposed tariff amendments would preclude them from doing so. Thus, there is no need for the requested report. *See* ComEd Ex. 11 at 7.

**B. Ratemaking Treatment of Revenues and Cost under Rate 6L pursuant to Section 16-111(d)**

Staff has also asked the Commission to put ComEd on notice that it should file an allocation methodology to exclude costs and revenues associated with competitive services if it were to file for a rate increase under Section 16-111(d) of the Public Utilities Act. Staff Ex. 1.00 at 3-4, 6. That section provides that, during the mandatory transition

period, an electric utility may request an increase in basic rates if its earned rate of return falls below a certain level. It also states:

In setting rates under this Section, the Commission shall exclude the costs and revenues that are associated with competitive services...

*See* 220 ILCS 5/16-111(d). As explained above, however, tariffed services provided during the statutorily required transition period provided for under Section 16-113(b) are not “competitive services” within the meaning of this section. Thus, this requirement would not apply to the continued provision of Rate 6L pursuant to the statutory grandfather provision after a competitive declaration. That offering would be a tariffed and regulated one; and Staff agrees that traditional “above the line” accounting treatment would be appropriate. Staff Ex. 1.00 at 3. Thus, should ComEd have to need to make a filing under Section 16-111(d), no separation of the revenues and expenses associated with this offering should be required.

**V. Conclusion: The Petition Should Be Granted Or Allowed Into Effect By Operation of Law**

The switching evidence summarized above demonstrates that ComEd’s Petition to declare its Rate 6L service competitive for those customers with loads of 3 MW or greater meets the statutory standards established by the General Assembly and should be granted. But the evidence also shows that there are broader policy reasons supporting the grant of the Petition. As ComEd Vice President Arlene Juracek summarized:

Because the continued availability of Rate 6L leaves future pricing and load serving obligations in limbo, and promotes a focus on short-term relationships and decisions it should not be simply left in place. Announcing now that its future availability will be limited sends the right signals to both customers and suppliers – signals that are needed for the

ongoing market development that will lead to lower costs over the long term and more and better choices.”

ComEd Ex. 11 at 6. Leaving Rate 6L in place for this customer segment – which not only has competitive options but has also demonstrated the ability to use those options – does not promote the effective and efficient competition envisioned by the General Assembly. To the extent that maintaining a free option to return to Rate 6L service raises ComEd’s costs of services and impedes the development of competition for other customer classes, it is not equitable. Accordingly for these, and all of the reasons stated above, the Commission should grant ComEd’s Petition or allow it to take effect by operation of law.

Respectfully submitted,  
COMMONWEALTH EDISON COMPANY

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One of its Attorneys

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